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EXTRAORDINARY

PART II—Section 2

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HOUSE OF THE PEOPLE

The following Bill was introduced in the House of the People on 16th November, 1953:—

BILL No. 50 OF 1953

A Bill further to amend the Banking Companies Act, 1949.

BE it enacted by Parliament as follows:—

1. Short title.—This Act may be called the Banking Companies (Amendment) Act, 1953.

2. Amendment of section 5, Act X of 1949.—In section 5 of the Banking Companies Act, 1949 (hereinafter referred to as the principal Act), clause (e) of sub-section (1) shall be omitted.

3. Insertion of new section 36A in Part III in Act X of 1949.—In Part III of the principal Act, after section 36, the following section shall be inserted, namely:—

“36A. *High Court defined.*—In this Part and in Part IIIA, ‘High Court’, in relation to a banking company, means the High Court exercising jurisdiction in the place where the registered office of the banking company is situated or, in the case of a banking company incorporated outside India, where its principal place of business in India is situated”.

4. Substitution of “High Court” for Court in Part III in Act X of 1949.—In Part III of the principal Act, for the word “Court” wherever it occurs the words “High Court” shall be substituted.

5. Amendment of section 37, Act X of 1949.—In section 37 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:—

“(3) When an application is made under sub-section (1), the High Court may appoint a special officer who shall forthwith take into his custody or under his control all the assets, books, documents, effects and actionable claims to which the banking company is or appears to be entitled and shall also exercise such other powers as the High Court may deem fit to confer on him, having regard to the interests of the depositors of the banking company”.

6. Insertion of new section 38A in Act X of 1949.—After section 38 of the principal Act, the following section shall be inserted, namely:—

“38A. Court liquidator.—(1) There shall be attached to every High Court a court liquidator to be appointed by it for the purpose of conducting all proceedings for the winding up of banking companies and performing such other duties in reference thereto as the High Court may impose.

(2) Where there is a court liquidator attached to a High Court and an order is passed by the High Court for the winding up of any banking company, then, notwithstanding anything contained in section 171A or section 175 of the Indian Companies Act, 1913 (VII of 1913), the court liquidator shall become the official liquidator of the banking company unless the High Court, having regard to the special circumstances obtaining in the case of the banking company and for reasons to be recorded, otherwise directs in the order for the winding up of the banking company.

(3) Where there is a court liquidator attached to a High Court and any proceeding for the winding up of a banking company in which any person other than the Reserve Bank or the court liquidator has been appointed as official liquidator is pending before the High Court immediately before the commencement of the Banking Companies (Amendment) Act, 1953, or the date on which the court liquidator is so attached to the High Court, whichever is later, then, notwithstanding anything contained in section 176 of the Indian Companies Act, 1913 (VII of 1913), the person appointed as the official liquidator shall, on such commencement or, as the case may be, on the aforesaid date, be deemed to have vacated his office as such and the vacancy so caused shall be deemed to be filled up by the appointment of the court liquidator as the official liquidator:

Provided that where the High Court is of opinion that the appointment of the court liquidator would be detrimental to the interests of the depositors of the banking company, it may direct the person appointed as the official liquidator to continue to act as such.

(4) Where having regard to the number of banking companies wound up and other circumstances of the case, the Central Government is of opinion that it is not necessary or expedient to attach for the time being a court liquidator to a High Court, it may, from time to time, by notification in the Official Gazette, direct that this section shall not have effect in relation to that High Court”.

7. Amendment of section 39, Act X of 1949.—In section 39 of the principal Act, after the words “Notwithstanding anything contained” the words, figures and letter “in section 38A of this Act or” shall be inserted.

8. Substitution of new sections for section 43 in Act X of 1949.—For section 43 of the principal Act, the following sections shall be substituted, namely:—

“43. Booked depositors’ credits to be deemed proved.—In any proceeding for the winding up of a banking company, every

depositor of the banking company shall be deemed to have filed his claim for the amount shown in the books of the banking company as standing to his credit and, notwithstanding anything to the contrary contained in section 191 of the Indian Companies Act, 1913 (VII of 1913), the High Court shall presume such claims to have been proved, unless the official liquidator shows that there is reason for doubting its correctness.

43A. *Preferential payment to small depositors.*—(1) In every proceeding for the winding up of a banking company, after the preferential payments referred to in section 230 of the Indian Companies Act, 1913 (VII of 1913) have been made, there shall be paid, to every depositor in the savings bank account of the banking company, a sum of one hundred rupees or the balance at his credit, whichever is less, in priority to all other debts from out of the remaining assets of the banking company available for payment of general creditors.

(2) The aforesaid payments shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportion”.

9. **Amendment of section 45, Act X of 1949.**—Section 45 of the principal Act shall be re-numbered as sub-section (1) thereof, and—

(a) in sub-section (1) as so re-numbered, for the words “as not being detrimental to the interests of the depositors of such company”, the words “in writing as not being incapable of being worked and as not being detrimental to the interests of the depositors of such banking company” shall be substituted;

(b) after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Where an application under section 153 of the Indian Companies Act, 1913 (VII of 1913) is made in respect of a banking company, the High Court may direct the Reserve Bank to make an inquiry in relation to the affairs of the banking company and the conduct of its directors and when such a direction is given, the Reserve Bank shall make such inquiry and submit its report to the High Court”.

10. **Substitution of new Part for Part IIIA in Act X of 1949.**—For Part IIIA of the principal Act, the following Part shall be substituted, namely:—

“PART IIIA

SPECIAL PROVISIONS FOR SPEEDY DISPOSAL OF WINDING UP PROCEEDINGS

45A. *Part IIIA to override other laws.*—The provisions of this Part and the rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in the Indian Companies Act, 1913 (VII of 1913) or the Code of Civil Procedure, 1908 (Act V of 1908) or the Code of Criminal Procedure, 1898 (Act V of 1898) or any other law for the time being in force or any instrument having effect by virtue of any such law but the provisions of any such law or instrument in so far as the same are not varied by, or inconsistent with, the provisions of this Part or rules made thereunder shall apply to all proceedings under this Part.

45B. Power of High Court to decide all claims in respect of banking companies.—The High Court shall, save as otherwise expressly provided in section 45C, have exclusive jurisdiction to entertain and decide any claim made by or against a banking company which is being wound up (including claims by or against any of its branches in India) or any application made under section 153 of the Indian Companies Act, 1913 (VII of 1913) by or in respect of a banking company or any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in the course of the winding up of a banking company, whether such claim or question has arisen or arises or such application has been made or is made before or after the date of the order for the winding up of the banking company or before or after the commencement of the Banking Companies (Amendment) Act, 1953.

45C. Transfer of pending proceedings.—(1) Where a winding up order is made or has been made in respect of a banking company, no suit or other legal proceeding, whether civil or criminal, in respect of which the High Court has jurisdiction under this Act and which is pending in any other court immediately before the commencement of the Banking Companies (Amendment) Act, 1953, or the date of the order for the winding up of the banking company, whichever is later, shall be proceeded with except in the manner hereinafter provided.

(2) The official liquidator shall, within three months from the date of the winding up order or the commencement of the Banking Companies (Amendment) Act, 1953, whichever is later, submit to the High Court a report containing a list of all such pending proceedings together with particulars thereof.

(3) On receipt of a report under sub-section (2), the High Court may, if it so thinks fit, give the parties concerned an opportunity to show cause why the proceedings should not be transferred to itself and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make such order as it deems fit transferring to itself all or such of the pending proceedings as may be specified in the order and such proceedings shall thereafter be disposed of by the High Court.

(4) If any proceeding pending in a court is not so transferred to the High Court under sub-section (3), such proceeding shall be continued in the court in which the proceeding was pending.

(5) Nothing in this section shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.

45D. Settlement of list of debtors.—(1) Notwithstanding anything to the contrary contained in any law for the time being in force, the High Court may settle in the manner hereinafter provided a list of debtors of the banking company which is being wound up.

(2) Subject to any rules that may be made under section 52, the official liquidator shall, within six months from the date of the winding up order or the commencement of the Banking

Companies (Amendment) Act, 1953, whichever is later, from time to time, file to the High Court lists of debtors containing such particulars as are specified in the Fourth Schedule:

Provided that such lists may, with the leave of the High Court, be filed after the expiry of the said period of six months.

(3) On receipt of any list under sub-section (2), the High Court shall, wherever necessary, cause notices to be issued on all persons affected and after making an inquiry in such manner as may be provided by rules made under section 45U, it shall make an order settling the list of debtors:

Provided that nothing in this section shall debar the High Court from settling any such list in part as against such of the persons whose debts have been settled without settling the debts of all the persons placed on the list.

(4) At the time of the settlement of any such list, the High Court shall pass an order for the payment of the amount due by each debtor and make such further orders as may be necessary in respect of the relief claimed, including reliefs against any guarantor or in respect of the realisation of any security.

(5) Every such order shall, subject to the provisions for appeal, be final and binding for all purposes as between the banking company on the one hand and the person against whom the order is passed and all persons claiming through or under him on the other hand, and shall be deemed to be a decree in a suit.

(6) In respect of every such order, the High Court shall issue a certificate specifying clearly the reliefs granted and the names and descriptions of the parties against whom such reliefs have been granted, the amount of costs awarded and by whom, and out of what funds and in what proportions, such costs are to be paid; and every such certificate shall be deemed to be a certified copy of the decree for all purposes including execution.

(7) At the time of settling the list of debtors or at any other time prior or subsequent thereto, the High Court shall have power to pass any order in respect of a debtor on the application of the official liquidator for the realisation, management, protection, preservation or sale of any property given as security to the banking company and to give such powers to the official liquidator to carry out the aforesaid directions as the High Court thinks fit.

(8) The High Court shall have power to sanction a compromise in respect of any debt and to order the payment of any debt by instalments.

(9) In any case in which any such list is settled *ex parte* as against any person, such person may, within thirty days from the date of the order settling the list, apply to the High Court for an order to vary such list, so far as it concerns him, and if the High Court is satisfied that he was prevented by any sufficient cause from appearing on the date fixed for the settlement of such list and that he has a good defence to the

claim of the banking company on merits, the High Court may vary the list and pass such orders in relation thereto as it thinks fit;

Provided that the High Court may, if it so thinks fit, entertain the application after the expiry of the said period of thirty days.

(10) Nothing in this section shall—

(a) apply to a debt which has been secured by a mortgage of immovable property, if a third party has any interest in such immovable property; or

(b) prejudice the rights of the official liquidator to recover any debt due to a banking company under any other law for the time being in force.

45E. *Special provisions to make calls on contributories.*—Notwithstanding that the list of the contributories has not been settled under section 184 of the Indian Companies Act, 1913 (VII of 1913), the High Court may, if it appears to it necessary or expedient so to do, at any time after making a winding up order, make a call on and order payment thereof by any contributory under sub-section (1) of section 187 of the Indian Companies Act, 1913, if such contributory has been placed on the list of contributories by the official liquidator and has not appeared to dispute his liability.

45F. *Documents of banking company to be evidence.*—(1) Entries in the books of account or other documents of a banking company which is being wound up shall be admitted in evidence in all proceedings by or against the banking company; and all such entries may be proved either by the production of the books of account or other documents of the banking company containing such entries or by the production of a copy of the entries, certified by the official liquidator under his signature and stating that it is a true copy of the original entries and that such original entries are contained in the books of account or other documents of the banking company in his possession.

(2) Notwithstanding anything to the contrary contained in the Indian Evidence Act, 1872 (I of 1872), all such entries in the books of account or other documents of a banking company shall, as against the directors of the banking company in respect of which the winding up order has been made before the commencement of the Banking Companies (Amendment) Act, 1953, be *prima facie* evidence of the truth of all matters purporting to be therein recorded.

45G. *Public examination of directors and auditors.*—(1) Where an order has been made for the winding up of a banking company, the official liquidator shall submit a report whether in his opinion any loss has been caused to the banking company since its formation by any act or omission (whether or not a fraud has been committed by such act or omission) of any person in the promotion or formation of the banking company or of any director or auditor of the banking company.

(2) If, on consideration of the report submitted under sub-section (1), the High Court is of opinion that any person

who has taken part in the promotion or formation of the banking company or has been a director or an auditor of the banking company should be publicly examined, it shall hold a public sitting on a date to be appointed for that purpose and direct that such person, director or auditor shall attend thereat and shall be publicly examined as to the promotion or formation or the conduct of the business of the banking company, or as to his conduct and dealings, in so far as they relate to the affairs of the banking company.

(3) The official liquidator shall take part in the examination and for that purpose may, if specially authorised by the High Court in that behalf, employ such legal assistance as may be sanctioned by the High Court.

(4) Any creditor or contributory may also take part in the examination either personally or by any person entitled to appear before the High Court.

(5) The High Court may put such questions to the person examined as it thinks fit.

(6) The person examined shall be examined on oath and shall answer all such questions as the High Court may put or allow to be put to him.

(7) A person ordered to be examined under this section may, at his own cost, employ any person entitled to appear before the High Court who shall be at liberty to put to him such questions as the High Court may deem just for the purpose of enabling him to explain or qualify any answer given by him:

Provided that if he is, in the opinion of the High Court, exculpated from any charges or suggestions made against him, the High Court may allow him such costs in its discretion as it may deem fit.

(8) Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined and may thereafter be used in evidence against him in any proceeding, civil or criminal, and shall be open to the inspection of any creditor or contributory at all reasonable times.

(9) Where on such examination, the High Court is of opinion (whether a fraud has been committed or not)—

(a) that a person who has been a director of the banking company is not fit to be a director of a company, or

(b) that a person who has been an auditor of the banking company or a partner of a firm acting as such auditor is not fit to act as an auditor of a company or to be a partner of a firm acting as such auditor,

the High Court may make an order that that person shall not, without the leave of the High Court, be a director of, or in any way, whether directly or indirectly, be concerned or take part in the management of any company or, as the case may be, act as an auditor of, or be a partner of a firm acting as auditors of, any company for such period not exceeding five years as may be specified in the order.

45H. *Special provisions for assessing damages against delinquent directors, etc.*—(1) Where an application is made to the High Court under section 235 of the Indian Companies Act, 1913 (VII of 1913) against any promoter, director, manager, liquidator or officer of a banking company for repayment or restoration of any money or property and the applicant makes out a *prima facie* case against such person, the High Court shall make an order against such person to repay and restore the money or property unless he proves that he is not liable to make the repayment or restoration either wholly or in part:

Provided that where such an order is made jointly against two or more such persons, they shall be jointly and severally liable to make the repayment or restoration of the money or property.

(2) Where an application is made to the High Court under section 235 of the Indian Companies Act, 1913 (VII of 1913) and the High Court has reason to believe that a property belongs to any promoter, director, manager, liquidator or officer of the banking company, whether the property stands in the name of such person or any other person as the ostensible owner, then, the High Court may, at any time, whether before or after making an order under sub-section (1), direct the attachment of such property, or such portion thereof, as it thinks fit and the property so attached shall remain subject to attachment unless the ostensible owner can prove to the satisfaction of the High Court that he is the real owner and the provisions of the Code of Civil Procedure, 1908 (Act V of 1908) relating to attachment of property shall, as far as may be, apply to such attachment.

45I. *Duty of directors and officers of banking company to assist in the realisation of property.*—Every director or other officer of a banking company which is being wound up shall give such assistance to the official liquidator as he may require in the realisation and distribution of the property of the banking company and if the director or other officer fails to do so, he shall be guilty of contempt of court.

45J. *Special provisions for punishing offences in relation to banking companies being wound up.*—(1) The High Court may, if it thinks fit, take cognizance of and try in a summary way any offence alleged to have been committed by any person who has taken part in the promotion or formation of the banking company which is being wound up or by any director, manager or officer thereof:

Provided that the offence is one punishable under this Act or under the Indian Companies Act, 1913 (VII of 1913).

(2) When trying any such offence as aforesaid, the High Court may also try any other offence not referred to in sub-section (1) which is an offence with which the accused may, under the Code of Criminal Procedure, 1898 (Act V of 1898), be charged at the same trial.

(3) In any case tried summarily under sub-section (1), the High Court—

(a) need not summon any witness, if it is satisfied that the evidence of such witness will not be material;

(b) shall not be bound to adjourn a trial for any purpose unless such adjournment is, in the opinion of the High Court, necessary in the interests of justice;

(c) shall, before passing any sentence, record judgment embodying the substance of the evidence and also the particulars specified in section 263 of the Code of Criminal Procedure, 1898 (Act V of 1898), so far as that section may be applicable;

and nothing contained in sub-section (2) of section 262 of the Code of Criminal Procedure, 1898, shall apply to any such trial.

(4) All offences in relation to winding up alleged to have been committed by any person specified in sub-section (1) which are punishable under this Act or under the Indian Companies Act, 1913 (VII of 1913), and which are not tried in a summary way under sub-section (1) shall, notwithstanding anything to the contrary contained in that Act or the Code of Criminal Procedure, 1898 (Act V of 1898) or in any other law for the time being in force, be taken cognizance of and tried by a Judge of the High Court other than the Judge for the time being dealing with the proceedings for the winding up of the banking company.

(5) Notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1898 (Act V of 1898), the High Court may take cognizance of any offence under this section without the accused being committed to it for trial and all such trials shall be without the aid of a jury.

45K. Power of High Court to enforce schemes of arrangements, etc.—(1) Where a High Court makes an order under section 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or arrangement in respect of a banking company, it shall have power to supervise the carrying out of the compromise or arrangement and may at the time of making such order or at any time thereafter give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the High Court is satisfied that a compromise or arrangement sanctioned under section 153 of the Indian Companies Act, 1913 (VII of 1913) cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the banking company, make an order winding up the banking company and such an order shall be deemed to be an order made under section 162 of the Indian Companies Act, 1913.

(3) The provisions of this section shall, so far as they may, apply to a banking company in respect of which an order under section 153 of the Indian Companies Act, 1913 (VII of 1913) sanctioning a compromise or arrangement has been made before the commencement of the Banking Companies (Amendment) Act, 1953.

45L. *Public examination of directors and auditors, etc., in respect of a banking company under schemes of arrangement.*—

(1) Where an application for sanctioning a compromise or arrangement in respect of a banking company is made under section 153 of the Indian Companies Act, 1913 (VII of 1913) or where such sanction has been given and the High Court is of opinion, whether on a report of the Reserve Bank or otherwise, that any person who has taken part in the promotion or formation of the banking company or has been a director or auditor of the banking company should be publicly examined, it may direct such examination of such person and the provisions of section 45G shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up.

(2) Where a compromise or arrangement is sanctioned under section 153 of the Indian Companies Act, 1913 (VII of 1913) in respect of a banking company, the provisions of section 235 of the said Act and of section 45H of this Act shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

45M. *Special provisions for banking companies working under schemes of arrangement at the commencement of the Amendment Act.*—Where any compromise or arrangement sanctioned in respect of a banking company under section 153 of the Indian Companies Act, 1913 (VII of 1913) is being worked at the commencement of the Banking Companies (Amendment) Act, 1953, the High Court may, if it so thinks fit, on the application of such banking company,—

(a) excuse any delay in carrying out any of the provisions of the compromise or arrangement; or

(b) allow the banking company to settle the list of its debtors in accordance with the provisions of section 45D and in such a case, the provisions of the said section shall, as far as may be, apply to the banking company as they apply to a banking company which is being wound up as if the order sanctioning the compromise or arrangement were an order for the winding up of the banking company.

45N. *Appeals.*—(1) An appeal shall lie from any order or decision of the High Court in a civil proceeding under this Act when the amount or value of the subject-matter of the claim exceeds five thousand rupees.

(2) The High Court may by rules provide for an appeal against any order made under section 45J and the conditions subject to which any such appeal would lie.

(3) Subject to the provisions of sub-section (1) and sub-section (2) and notwithstanding anything contained in any other law for the time being in force, every order or decision of the High Court shall be final and binding for all purposes as between the banking company on the one hand, and all persons who are parties thereto and all persons claiming through or under them or any of them, on the other hand.

45O. *Special period of limitation.*—(1) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or in any other law for the time being in force, in computing the period of limitation prescribed for a suit or application by a banking company which is being wound up, the period commencing from the date of the presentation of the petition for the winding up of the banking company shall be excluded.

(2) Notwithstanding anything to the contrary contained in the Indian Limitation Act, 1908 (IX of 1908) or section 235 of the Indian Companies Act, 1913 (VII of 1913) or in any other law for the time being in force, there shall be no period of limitation for the recovery of arrears of calls from any director of a banking company which is being wound up or for the enforcement by the banking company against any of its directors of any claim based on a contract, express or implied; and in respect of all other claims by the banking company against its directors, the period of limitation shall be twelve years from the date of the accrual of such claims.

(3) The provisions of this section shall, as far as may be, apply to a banking company in respect of which a petition for the winding up has been presented before the commencement of the Banking Companies (Amendment) Act, 1953.

45P. *Reserve Bank to tender advice in winding up proceedings.*—Where in any proceeding for the winding up of a banking company in which any person other than the Reserve Bank has been appointed as the official liquidator and the High Court has directed the official liquidator to obtain the advice of the Reserve Bank on any matter (which it is hereby empowered to do), it shall be lawful for the Reserve Bank to examine the record of any such proceeding and tender such advice on the matter as it may think fit.

45Q. *Power to inspect.*—(1) The Reserve Bank shall, on being directed so to do by the Central Government or by the High Court, cause an inspection to be made by one or more of its officers of a banking company which is being wound up and its books and accounts.

(2) On such inspection, the Reserve Bank shall submit its report to the Central Government and the High Court.

(3) If the Central Government, on consideration of the report of the Reserve Bank, is of opinion that there has been a substantial irregularity in the winding up proceedings, it may bring such irregularity to the notice of the High Court for such action as the High Court may think fit.

(4) On receipt of the report of the Reserve Bank under sub-section (2) or on any irregularity being brought to its notice by the Central Government under sub-section (3), the High Court may, if it deems fit, after giving notice to and hearing the Central Government in regard to the report, give such directions as it may consider necessary.

45R. *Power to call for returns and information.*—The Reserve Bank may, at any time by a notice in writing, require the liquidator of a banking company to furnish it, within such time as may be specified in the notice or such further time as the Reserve Bank may allow, any statement or information relating to or connected with the winding up of the banking company; and it shall be the duty of every liquidator to comply with such requirements.

Explanation.—For the purposes of this section and section 45Q, a banking company working out a compromise or arrangement but prohibited from receiving fresh deposits, shall, as far as may be, be deemed to be a banking company which is being wound up.

45S. *Chief presidency magistrate and district magistrate to assist official liquidator in taking charge of property of banking company being wound up.*—(1) For the purpose of enabling the official liquidator or the special officer appointed under sub-section (3) of section 37 to take in his custody or under his control, all property, effects and actionable claims to which a banking company, which has been ordered to be wound up, is or appears to be entitled, the official liquidator or the special officer, as the case may be, may request in writing the chief presidency magistrate or the district magistrate, within whose jurisdiction any property, books of account or other documents of such banking company may be situate or is to be found, to take possession thereof, and the chief presidency magistrate or the district magistrate, as the case may be, shall, on such request being made to him, take possession of such property, books of account or other documents and forward them to the official liquidator or the special officer.

(2) For the purpose of securing compliance with the provisions of sub-section (1), the chief presidency magistrate or the district magistrate may take or cause to be taken such steps and use or cause to be used such force as may, in his opinion, be necessary.

45T. *Enforcement of orders and decisions of High Court.*—(1) All orders made in any civil proceeding by a High Court may be enforced in the same manner in which decrees of such court made in any suit pending therein may be enforced.

(2) Notwithstanding anything to the contrary contained in the Code of Civil Procedure, 1908 (Act V of 1908), a liquidator may apply for the execution of a decree by a court other than the one which made it on production of a certificate granted under sub-section (6) of section 45D and on his certifying to such other court in writing the amount remaining due or relief remaining unenforced under the decree.

(3) Without prejudice to the provisions of sub-section (1) or sub-section (2), any amount found due to the banking company by an order or decision of the High Court may, with the leave of the High Court, be recovered in the same manner as an arrear of land revenue.

45U. Power of High Court to make rules.—The High Court may make rules consistent with this Act and the rules made under section 52 prescribing—

(a) the manner in which inquiries and proceedings under Part III or Part IIIA may be held;

(b) the offences which may be tried summarily;

(c) the authority to which and the conditions subject to which appeals may be preferred and the manner in which such appeals may be filed and heard;

(d) any other matter for which provision has to be made for enabling the High Court to effectively exercise its functions under this Act.

45V. Part II not to apply to banking companies being wound up.—Nothing contained in Part II shall apply to a banking company which is being wound up.

45W. Validation of certain proceedings.—Notwithstanding anything contained in section 45B or any other provision of this Part or in section 11 of the Banking Companies (Amendment) Act, 1950 (XX of 1950), no proceeding held, judgment delivered or decree or order made before the commencement of the Banking Companies (Amendment) Act, 1953, by any court other than the High Court in respect of any matter over which the High Court has jurisdiction under this Act shall be invalid or be deemed ever to have been invalid merely by reason of the fact that such proceeding, judgment, decree or order was held, delivered or made by a court other than the High Court."

11. Amendment of section 52, Act X of 1949.—In section 52 of the principal Act,—

(a) to sub-section (2), the following shall be added, namely:—

"and the form in which the official liquidator may file lists of debtors to the Court having jurisdiction under Part III or Part IIIA and the particulars which such lists may contain and any other matter which has to be, or may be, prescribed";

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The Central Government may by rules made under this section annul, alter or add to, all or any of the provisions of the Fourth Schedule."

12. Insertion of new Schedule in Act X of 1949.—After the Third Schedule to the principal Act, the following Schedule shall be inserted, namely:—

"THE FOURTH SCHEDULE

[See section 45D (2)]

LIST OF DEBTORS

1. The official liquidator shall from time to time submit lists of debtors to the High Court, each list being verified by an affidavit.

2. Every such list shall contain the following particulars:—

- (a) names and addresses of the debtors;
- (b) amount of debt due to the banking company by each debtor;
- (c) rate of interest, if any, and the date up to which such interest has been calculated in the case of each debtor;
- (d) description of papers, writings and documents, if any, relating to each debt;
- (e) relief or reliefs claimed against each debtor.

3. (a) In every such list, the official liquidator shall distinguish between the debts for which the banking company holds any security other than a personal security and the debts for which no security or only a personal security is given;

(b) In the case of secured debts, particulars of the securities claimed by the banking company, and whenever possible their estimated value, and the names and addresses of person or persons, if any, having an interest in the securities or the right of redemption therein;

(c) In case the debt is guaranteed by any person or persons, the name and address of the guarantor or guarantors with particulars as to the extent to which the debt is guaranteed and description of documents, papers or writings in support of such guarantee.

4. If the debtor is adjudged insolvent either before or after he has been included in any such list, but before such list is settled, the name and address of the assignee or the receiver of his estate, as the case may be, should be stated in, or added to, the list.

5. If the original debtor dies either before or after he has been included in any such list, but before such list is settled, there shall be substituted in his place the names and addresses of his legal representatives as far as the official liquidator is able to ascertain."

13. Repeal of Ordinance 4 of 1953.—(1) The Banking Companies (Amendment) Ordinance, 1953 (4 of 1953) is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken in the exercise of any power conferred by or under the said Ordinance shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the day on which such thing was done or action was taken.

STATEMENT OF OBJECTS AND REASONS

The Banking Companies Act, 1949 (X of 1949) was passed to ensure proper administration of the banking companies in India. The liquidation of banks, however, continued to be governed by the provisions of the Indian Companies Act, 1913.

Experience of the liquidation of a large number of banks that failed during the post-war and post-partition period disclosed that the procedure for the liquidation of joint stock companies was totally inadequate for the liquidation of banking companies in a manner satisfactory to the depositors. A bank has a far larger number of debtors than a joint stock company of a comparable size, and the necessity to pursue legal proceedings against each debtor, quite frequently in different courts, involves considerable expenditure and immense delay. In order to remove such difficulties, the Banking Companies Act was amended in 1950.

The law thus amended, however, did not go far enough and complaints continued to be received about the distress of the depositors. A committee was, therefore, appointed in July, 1950 to examine the difficulties and defects in the existing liquidation procedure and to recommend changes in law, procedure and machinery, in order to facilitate the speedy disposal of proceedings in liquidation. The Committee submitted its report in December, 1952 and the report discloses that 321 banks were under liquidation under the various courts dating from 1926, with outside liabilities of about Rs. 30 crores and that the procedure for winding up of banking companies is cumbersome, prolonged and expensive. The Committee has recommended certain administrative as well as legislative measures for simplifying the procedure and expediting the proceedings. The Reserve Bank, the State Governments and the various High Courts were consulted on the recommendations of the Committee and the present Bill is based on the recommendations of the Committee and the suggestions of the authorities consulted.

The recommendations of the Committee requiring administrative action are being implemented. It was the intention of the Government to give effect to the recommendations requiring legislation simultaneously, but on account of the pre-occupation of Parliament with other urgent legislative measures during the last session, it was not found possible to have the Bill enacted during that session. Meanwhile, certain data recently collected about 82 banks in liquidation in West Bengal showed that while the expenses of liquidation amounted to Rs. 39.81 lakhs, the moneys returned to the depositors totalled to only Rs. 17.64 lakhs of which Rs. 15.61 lakhs were paid by one single bank. The publication of the Committee's report has evoked hopes in the minds of a large number of distressed depositors that implementation would soon follow and numerous requests were being received urging immediate action. It was also not possible to implement some of the administrative measures without an amendment of the Act. As the circumstances required immediate action, an Ordinance was promulgated on the 24th October, 1953—The Banking Companies (Amendment) Ordinance, 1953 (4 of 1953).

The present Bill seeks to replace the Ordinance by an Act of Parliament and the notes on clauses appended to the Bill explain the provisions thereof

C. D. DESHMUKH.

NEW DELHI;
The 12th November, 1953.

Notes on clauses

Clause 2.—The expression 'court' was defined in section 5 to mean the court having jurisdiction under the Indian Companies Act, 1913. In Parts III and IIIA, the expression 'High Court' has been used. The definition of 'court' in section 5 is misleading and has been omitted.

Clause 3.—In Parts III and IIIA, the expression High Court has been used. Its jurisdiction has been defined in sections 45B, 45C and 45J. The High Court shall have exclusive jurisdiction to deal with three distinct classes of cases—

(a) proceedings in relation to suspension of business of banks;

(b) winding up proceedings and questions which relate to or arise in the course of the winding up of the banking company, whether such question has arisen or arises before or after the winding up order;

(c) schemes of compromise or arrangement under section 153 of the Indian Companies Act, 1913.

Under section 45J, the High Court will have jurisdiction to try all offences under the Banking Companies Act as also under the Indian Companies Act. Under section 45C, it has been provided that all proceedings, whether civil or criminal, pending in any court, other than the High Court, shall be automatically stayed as soon as the Act comes into force. The High Court may transfer to itself such of the proceedings as it thinks fit. Cases which are not so transferred to the High Court shall be continued in the court in which they are pending.

Clause 5—section 37.—The appointment of special officer to take into his custody or under his control all the assets, books and documents of a banking company which has applied for suspension of business is considered necessary in the interests of the depositors in order to prevent persons with access to the banking company's records from concealing relevant books or altering entries therein.

Clause 6—section 38A.—The practice which prevails in all the States, except Bombay, is that a private liquidator is appointed by the court as official liquidator. It is considered desirable for greater expedition and reduction in costs of liquidation and from other stand-points that a court liquidator should be appointed who shall be in charge of all liquidation proceedings. It has, therefore, been provided that a court liquidator should be appointed by every High Court unless the Central Government grants an exemption in this behalf. The court liquidator shall be the official liquidator, unless the High Court otherwise directs. In respect of proceedings now pending before any private liquidator, the private liquidator shall, unless the High Court otherwise directs, vacate his office and the vacancy shall

be filled in by the appointment of the court liquidator as the official liquidator. An exception has been made in respect of the Reserve Bank in section 39. When the Reserve Bank makes an application in this behalf, the Reserve Bank shall be appointed as the official liquidator.

Clause 8—section 43.—This seeks to clarify the intention underlying section 43. In interpreting the existing section 43, some High Courts have held that depositors should be required to file their claims. The revised section dispenses with the necessity of filing such formal claims in order to rank for dividend.

Section 43A.—In some countries, the small depositor is an object of particular solicitude. The bulk of savings bank account holders belong to the poor and lower middle class. The distress caused to these classes, when a bank fails, is relatively greater. Preferential payment of Rs. 100 is intended to afford them some relief.

Clause 9—section 45.—Section 45 has been amended to clarify the functions of the Reserve Bank in relation to schemes of arrangement. A certificate of the Reserve Bank under section 45 of the Banking Companies Act shall state that—

(a) the arrangement is not detrimental to the interests of the depositors; and

(b) that arrangement is not impracticable.

It is considered that on a direction from the High Court, the Reserve Bank should investigate into the affairs of the bank and the conduct of the past management. Such a report of the Reserve Bank will be helpful to the High Court in exercising its discretion in sanctioning the scheme.

Clause 10

Section 45A.—This is intended to override the provisions of any law which is repugnant to this Part and in so far as such law is not so repugnant, such law shall continue to apply to proceedings under this Part.

Sections 45B, 45C and 45J.—The intention underlying these sections is to allow the liquidator to proceed with all proceedings in one court, namely, the High Court, and avoid recourse to a multiplicity of courts. The High Court has, however, been given the discretion not to transfer to itself any pending proceeding, if such transfer causes hardship to the parties.

Section 45D.—Multiplicity of proceedings has been one of the major evils and one of the chief causes of delay and expense in liquidation proceedings. The ordinary legal machinery for collection of debts by filing suits is slow and subject to delaying tactics on the part of the debtors. This section provides for a simple procedure for settlement of the list of debtors on the analogy of the list of contributories under the Indian Companies Act, 1913.

Section 45G.—Under the Indian Companies Act, calls cannot be made on contributories unless the entire list of contributories is settled. Such settlement is delayed when any of the contributories disputes his liability. It is, therefore, considered necessary that in the

case of banking companies, there should be a departure from the normal procedure of the Indian Companies Act and that contributors on the list who do not dispute their liability should be called upon to pay.

Section 45F.—It is often difficult for a liquidator to prove the entries in documents of banking companies. To obviate such difficulty, a simple mode of proving such entries has been provided.

Under the ordinary law, such entries, by themselves, are not sufficient to charge any person with liability. It is very difficult for a liquidator to produce the independent evidence required by law to substantiate such entries. This difficulty is acutely felt in misfeasance summons where large amounts are claimed from directors. At the same time, to make a general rule that such entries shall be taken as correct and sufficient proof of the transactions to which they relate would hardly be justified. The scope of section 45F(2) has, therefore, been restricted only to directors of banks which have gone into liquidation before the Amendment Act comes into force and the entries in the books of account will be *prima facie* evidence of the truth of all matters purporting to be recorded therein against the directors and the onus of proving the contrary will be on the directors.

Section 45G.—In the case of a banking company, the depositors, whose moneys are liable to be squandered, have no voice in the appointment of directors. Since the failure of a bank is mostly due to mismanagement and misdeeds on the part of the directors, it is reasonable that the delinquent directors and the auditors should be made answerable for defaults and be liable to penalties.

Section 45H.—The practical difficulty of establishing a claim and ensuring its satisfaction under section 235 of the Indian Companies Act is considerable. This provision is intended to lessen such difficulty.

The High Court has also been given powers to attach at any time any property which, in the opinion of the High Court, belongs to any promoter, director or officer of the banking company, though such property may stand in the name of a *benamdar* of such a person.

Section 45I.—This provision has been introduced on the lines of section 43 of the Presidency-towns Insolvency Act, 1909.

Section 45K.—This seeks to empower the High Court to exercise control over schemes of arrangement and also order winding up of banking companies when such schemes are found to be unworkable.

Section 45L.—It provides that the provisions of public examination of directors and auditors and those of section 235 of the Indian Companies Act, 1913, which are applicable to banks in liquidation only, shall also be available in respect of banks under schemes of arrangement.

Section 45M.—This seeks to give the benefit of the simple procedure of the settlement of debtors also to banks at present working under schemes of arrangement.

Section 45N.—It provides for a restricted right of appeal in certain cases.

Section 45O.—This section deals with the question of limitation. In any suit or application by a banking company which is being wound up, limitation should cease to run from the date of the presentation of the petition for winding up. It is also necessary to provide that there should be no limitation in the case of claims of a banking company arising *ex contractu* against the directors. In all other claims of the banking company against directors, the period of limitation should be twelve years. This section has been given retrospective effect.

Section 45P.—It reproduces the existing section 45D.

Section 45Q.—It provides for a closer supervision by the Reserve Bank over banking companies in liquidation.

Section 45R.—This would enable the Reserve Bank to keep itself in touch with liquidation proceedings and schemes of arrangement and would enable Government to decide when an inspection of any such bank is necessary.

Section 45S.—It reproduces the existing section 45E with slight modifications.

Section 45T.—45T(1) reproduces the existing section 45H. 45T(2) and 45T(3) are intended to expedite execution of orders and decrees passed against debtors.

Section 45U.—It deals with the rule-making powers of the High Court.

Section 45V.—Obviously, provisions which are intended to apply to a bank which is carrying on normal business cannot be applicable to a bank in liquidation.

Section 45W.—Certain proceedings pending before courts other than the High Court which ought to have been transferred to the High Court have not been so transferred. This seeks to validate all such proceedings.

Clause 11—section 52.—Amendment of section 52(2) is only consequential.

A new sub-section has been inserted as sub-section (4) to confer powers on the Central Government to frame rules consistent with section 45D for the effective implementation of the scheme of settlement of list of debtors.

Clause 12.—The Fourth Schedule.—This Schedule specifies the particulars which an application for the settlement of the list of debtors should contain.

M. N. KAUL,
Secretary.

